The contrary rule, which it must be admitted is applied in many states,[21] is the rule of "standpatism" and not the rule of progress. It, in effect, says to the property owner: "Because your neighbor has not sufficient energy to protect himself against flood waters you must let your property lie idle and valueless, for, if in attempting to protect yourself you turn so much as a teacupful more water over his land you must pay for the damage caused thereby." This is indeed a "dog in the manger" doctrine.

One of our California judges has well said that no other rule than the "common enemy" doctrine liberally applied will fit the conditions of our own growing agricultural state. "This rule which permits the owners of land subject to overflow from adjacent rivers to erect barriers to such overflow upon their own borders may and often does result in serious damage to adjoining or lower properties; but it is the only rule consistent with the development and improvement of vast bodies of potentially rich and valuable lands along low-lying river botoms."[22]

L. A. C.

WORKMEN'S COMPENSATION ACT: RIGHT TO COMPENSATION FOR INJURY CAUSED BY EMPLOYER'S VOLUNTARY ACT—The Workmen's Compensation Act of California, in common with such acts in most other states, demands that the injury in order to be compensable must occur in the course of employment and must also arise out of it, neither alone being sufficient.[1] In early cases the courts regarded the "course of employment" as the important factor. In the later cases, on the contrary, the principal inquiry is whether the injury "arose out of" the employment.[2] Any construction of the "arising out of" doctrine, like that of any other doctrine affecting workmen's compensation, must be based upon the fundamental principle of such compensation, namely that inasmuch as the industry must eventually bear the burden of recovery, either by paying premiums on insurance or by primary liability, it should be held liable only where it is really responsible. In other words, by no interpretation can the industry be held responsible for injuries or disease

(Washington) Cass v. Dicks (1896) 14 Wash. 75, 44 Pac. 113. For other cases see note 25 L. R. A. 527.

[21] See cases collected in note 25, L. R. A. 527, 531. It should be noted that in many of these states the rule was fixed in cases involving as defendant a railroad company, which by its embankment had obstructed flood waters and caused damage to neighboring land. It would seem that such cases might be specially dealt with as an exception to the California rule, by applying the "rule of reasonableness" as set forth in Jones v. Calif. Dev. Co., supra, n. 8. That is, since the railroad company is not building the embankment for the protection of any land it would seem "unreasonable under the existing circumstances" for them not to construct the embankment in such manner as to allow adequate passages for the flood water.

[22] Sloane, J., in Bixby v. Weinberg, supra, n. 13.

[1] Workmen's Compensation Act. § 6(a) (Cal. Stats. 1917, chap. 586, as amended by Stats. 1919, chap. 471).

[2] 25 Harvard Law Review, 421.

because of the mere fact that occupation in the industry placed the injured party in a position of contact with risks no different from those to which he would have been exposed elsewhere in the community. A construction of the act which holds that the liability of the industry may be enlarged or diminished by the acts of the employer in changing the conditions of the employment does no violence to this principle, but rather applies it logically. The definition of this doctrine most widely acquiesced in is that stated in the case of In re McNichols:[3] "An injury arises out of the employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. It must be incidental to the character of the business and not independent of the relation of master and servant." This definition has been expressly accepted in at least two California cases arising under the act.[4]

The case of *General Accident, Fire and Life Assurance Corporation v. Industrial Accident Commission*[5] presents an interesting interpretation of this doctrine. In this case it was held that an injury received by a garage employee from a bullet fired by his employer, while the latter was engaged in an altercation arising out of a business transaction, is an injury arising out of the employment.

This decision is based on the ground that the injury was the result of the voluntary, although unintentional, act of the employer in the defense of his property, and the court distinctly states that the fact that the injury was not peculiar to the employment does not defeat recovery. In other words, it holds that the test of causal relation between a particular hazard and the employment is not limited to the relation of the risk directly to the nature of the work being carried on. It also includes such additional dangers as the employer may, by his own act, introduce into the physical situation surrounding his employees, such hazards becoming a risk of the employment regardless of their logical connection with the business proper.

Where to draw the line so as to deal fairly with both employer and employee and at the same time carry out the purpose of the law is the difficult question in the interpretation of every act of this nature and, as Professor Bohlen says,[6] "until after years of litigation have built up an elaborate system, the question must always depend upon the circumstances of each case and upon the opinions of the triers of fact thereon." But every opinion which tends to place the question on a clearer basis tends to establish the system necessary to a thorough understanding and consistent administration of the act.

Considering the purpose of the act, which is not to punish wrong-

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[3] (1913) 215 Mass. 498, 102 N. E. 697, L. R. A. 1916 A 306.

[4] Kimbol v. Industrial Accident Commission (1916) 173 Cal. 351, 160 Pac. 150, 31 Ann. Cas. 421, L. R. A. 1917B 595; Coronado Beach Company v. Industrial Accident Commission (1916) 172 Cal. 682, 158 Pac. 212, L. R. A. 1916F 1164.

[5] (Aug. 15, 1921) 62 Cal. Dec. 195, 200 Pac. 419.

[6] 25 Harvard Law Review, 545.

doing or to reward merit, but to relieve a social condition, found in practice to be intolerable, by making the business bear as a part of its operating cost a part at least of the loss which it causes to those engaged in its operations, and considering the fact that every employer is charged with the duty of maintaining a safe place of employment and protecting his employees from accidental injury, both by the common law and by the provisions of the present Compensation Act,[7] the principal case seems to establish such a precedent as is needed and one which is in conformity with the purpose of the act and with the wording of the act itself.

In the course of his decision Justice Shurtleff stated that it might be said that to some extent the risk of shooting, hold-ups, assaults and the like, has in recent years become so closely associated with the garage business as to make employment in such an industry hazardous. This consideration may have added weight to the present case, but does not detract from the main principle upon which it was decided, as the Justice further stated, as noted above, that the fact that the injury was not peculiar to the employment does not defeat recovery. *W. N. K.*

Recent Decisions

ALIEN LAND LAW: RIGHT OF LESSOR TO ATTACK LEASE ON GROUNDS OF ALIENAGE OF LESSEE—An alien, ineligible to citizenship, brought an action as lessee to recover possession against his lessor, under a lease alleged to be invalid by virtue of Section 2 of the Alien Land Law, Cal. Stats 1913, p. 206. *Held:* that plaintiff's alienage could be taken advantage of only by the attorney general on behalf of the state in the manner provided by the above statute, and was not available as a defense to the lessor. *Suwa v. Johnson* (1921) 36 Cal. App. Dec. 42. Hearing in Supreme Court denied Oct. 24, 1921.

By common law an alien can take land by purchase but not by descent, and purchase includes both grant and devise. But though he has the capacity to take he may not hold, and the land may be seized by the sovereign. Until so seized, however, the alien has complete dominion over the same and in a real action may defend his title against all but the sovereign. Story, J. in Fairfax v. Hunter (1813) 11 U. S. (7 Cranch) 602, 619. See also Santa Paula Water Works v. Peralta (1896) 113 Cal. 38, 45 Pac. 168; McKinley Creek Mining Co. v. Alaska United Mining Co. (1901) 183 U. S. 563, 46 L. Ed. 331, 32 Sup. Ct. Rep. 84. "Promotion of public peace" and "Protection of the individual from arbitrary aggression" are attributed as reasons therefor. Doe v. Robertson (1819) 24 U. S. (11 Wheat.) 332, 6 L. Ed. 488. It has been held that an alien, when ousted, may recover possession, Norris v. Hoyt (1861) 18 Cal. 217; that an alien lessor may collect rents, Ramires v. Kent etc. Co. (1852) 2 Cal. 558; that he may defend against adverse claimants, Ferguson v. Neville (1882) 61 Cal. 356; and even as against the state, the freehold estate of an alien was not divested

[7] Workmen's Compensation Act, § 34 (Cal. Stats. 1917, chap. 586).